

FIRST REGULAR SESSION

# SENATE BILL NO. 573

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOUGHERTY.

Read 1st time February 25, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1645S.021

## AN ACT

To repeal sections 402.199, 402.200, 402.205, 402.215, and 402.217, RSMo, and to enact in lieu thereof five new sections relating to the Missouri family trust.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 402.199, 402.200, 402.205, 402.215, and 402.217, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 402.199, 402.200, 402.205, 402.215, and 402.217, to read as follows:

402.199. 1. The general assembly hereby finds and declares the following:

(1) It is an essential function of state government to provide basic support for persons with a mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease;

(2) The cost of providing basic support for persons with a mental or physical impairment is difficult for many to afford and they are forced to rely upon the government to provide such support;

(3) Families and friends of persons with a mental or physical impairment desire to supplement, but not replace, the basic support provided by state government and other governmental programs;

(4) The cost of medical, social or other supplemental services is often provided by families and friends of persons with mental or physical impairments, for the lifetime of such persons;

(5) It is in the best interest of the people of this state to encourage, enhance and foster the ability of families and friends of Missouri residents **and residents of adjacent states** with mental or physical impairments to supplement, but not to replace, the basic support provided by

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

state government and other governmental programs and to provide for medical, social or other supplemental services for such persons;

(6) Permitting and assisting families and friends of Missouri residents **and residents of adjacent states** with mental or physical impairments to supplement, but not to replace, the basic support provided by state government and other governmental programs and to provide medical, social or other supplemental services for such persons as necessary and desirable for the public health, safety and welfare of this state.

2. In light of the findings and declarations described in subsection 1 of this section, the general assembly declares the purpose of the Missouri family trust to be the encouragement, enhancement and fostering of the provision of medical, social or other supplemental services for persons with a mental or physical impairment by family and friends of such persons.

402.200. As used in sections 402.199 to 402.220, the following terms mean:

- (1) "Board of trustees", the Missouri family trust board of trustees;
- (2) "Charitable trust", the trust established to provide benefits for individuals, as set forth in section 402.215;
- (3) "Department", the department of mental health;
- (4) "Disability", a mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease, and where the impairment is verified by medical findings;
- (5) "Life beneficiary" **or "beneficiary"**, a designated beneficiary of the Missouri family trust;
- (6) "Net income", the earnings received on investments less administrative expenses and fees;
- (7) "Principal balance", the fair market value of all contributions made to a particular account, less distributions, determined as of the end of the calendar month immediately preceding the occurrence giving rise to any determination of principal balance;
- (8) "Requesting party", the party desiring arbitration;
- (9) "Responding party", the other party in arbitration of a dispute regarding benefits to be provided by the trust;
- (10) "Successor trust", the trust established upon distribution by the board of trustees pursuant to notice of withdrawal or termination and administered as set forth in section 402.215;
- (11) "Trust", the Missouri family trust established pursuant to sections 402.200 to 402.220;
- (12) "Trustee", a member of the Missouri family trust board of trustees.

402.205. 1. The families, friends and guardians of persons who have a disability or are eligible for services provided by the department of mental health, or both, may participate in a trust which may supplement the care, support, and treatment of such persons pursuant to the

provisions of sections 402.199 to 402.220. Neither the contribution to the trust for the benefit of a life beneficiary nor the use of trust income to provide benefits shall in any way reduce, impair or diminish the benefits to which such person is otherwise entitled by law; and the administration of the trust shall not be taken into consideration in appropriations for the department of mental health to render services required by law.

2. Unless otherwise prohibited by federal statutes or regulations, all state agencies shall disregard the trust as a resource when determining eligibility **of Missouri residents** for assistance under chapter 208, RSMo.

3. The assets of the board of trustees and assets held in trust pursuant to the provisions of sections 402.199 to 402.220 shall not be considered state money, assets of the state or revenue for any purposes of the state constitution or statutes. The property of the board of trustees and its income and operations shall be exempt from all taxation by the state or any of its political subdivisions.

402.215. 1. The board of trustees is authorized and directed to establish and administer the Missouri family trust. The board shall be authorized to execute all documents necessary to establish and administer the trust including the formation of a not-for-profit corporation created pursuant to chapter 355, RSMo, and to qualify as an organization pursuant to Section 501(c)(3) of the United States Internal Revenue Code.

2. The trust documents shall include and be limited by the following provisions:

(1) The Missouri family trust shall be authorized to accept contributions from any source including trustees, personal representatives, personal custodians pursuant to chapter 404, RSMo, and other fiduciaries, [other than directly] **and, subject to the provisions of subdivision (11) of this subsection** from the life beneficiaries and their respective spouses, to be held, administered, managed, invested and distributed in order to facilitate the coordination and integration of private financing for individuals who have a disability or are eligible for services provided by the Missouri department of mental health, or both, while maintaining the eligibility of such individuals for government entitlement funding. All contributions, and the earnings thereon, shall be administered as one trust fund; however, separate accounts shall be established for each designated beneficiary. The income earned, after deducting administrative expenses, shall be credited to the accounts of the respective life beneficiaries in proportion to the principal balance in the account for each such life beneficiary, to the total principal balances in the accounts for all life beneficiaries.

(2) Every donor may designate a specific person as the life beneficiary of the contribution made by such donor. In addition, each donor may name a cotrustee, including the donor, and a successor or successors to the cotrustee, to act with the trustees of the trust on behalf of the designated life beneficiary; provided, however, a life beneficiary shall not be eligible to be a cotrustee or a successor cotrustee; provided, however, that court approval of the specific person

designated as life beneficiary and as cotrustee or successor trustee shall be required in connection with any trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo.

(3) The [trust] **cotrustee**, with the consent of the [cotrustee] **trust**, shall **from time to time, but not less frequently than** annually [agree on] **determine** the amount of income or principal or income and principal to be used to provide noncash benefits and the nature and type of benefits to be provided for the life beneficiary. Any net income which is not used shall be added to principal annually. [In the event that the trust and the donor, serving as the cotrustee, shall be unable to agree either on the amount of income or principal or income and principal to be used for or the benefits to be provided, then none of the income or principal shall be used.] In the event that the trust and the cotrustee[, other than the donor,] shall be unable to agree either on the amount of income or principal or income and principal to be used or the benefits to be provided, then either the trust or the cotrustee shall have the right to request that the matter be resolved by arbitration **which shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association**. The requesting party shall send a written request for arbitration to the responding party and shall in such request set forth the name, address and telephone number of such requesting party's arbitrator. The responding party shall, within ten days after receipt of the request for arbitration, set forth in writing to the requesting party the name, address and telephone number of the responding party's arbitrator. Copies of the request for arbitration and response shall be sent to the director of the department. If the two designated arbitrators shall be unable to agree upon a third arbitrator within ten days after the responding party shall have identified such party's arbitrator, then the director of the department shall designate the third arbitrator by written notice to the requesting and responding parties' arbitrators. The three arbitrators shall meet **and conduct a hearing** and render a decision within thirty days after the appointment of the third arbitrator. A decision of a majority of the arbitrators shall be binding upon the requesting and responding parties. Each party shall pay the fees and expenses of such party's arbitrator and the fees and expenses of the third arbitrator shall be borne equally by the parties. **Judgment on the arbitrators' award may be entered in any court of competent jurisdiction.**

(4) Any donor, during his or her lifetime, except for a trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo, may revoke any gift made to the trust; provided, however, any donor may, at any time, voluntarily waive the right to revoke. In the event that at the time the donor shall have revoked his or her gift to the trust the life beneficiary shall not have received any benefits provided by use of trust income or principal, then an amount equal to one hundred percent of the principal balance shall be returned to the donor. Any undistributed net income shall be distributed to the charitable trust. In the event that at the time the donor shall have revoked his or her gift to the trust the life beneficiary shall have received any benefits provided by the use of trust income or principal, then an amount equal to

ninety percent of the principal balance shall be returned to the donor. The balance of the principal balance together with all undistributed net income, shall be distributed to the charitable trust.

(5) Any acting cotrustee, except a cotrustee of a trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo, other than the original donor of a life beneficiary's account, shall have the right, for good and sufficient reason upon written notice to the trust and the department stating such reason, to withdraw all or a portion of the principal balance. In such event, the applicable portion, as set forth [below,] **in subdivision (7) of this subsection**, of the principal balance shall then be distributed to the successor trust and the balance of the principal balance together with any undistributed net income, shall be distributed to the charitable trust.

(6) In the event that a life beneficiary for whose benefit a contribution or contributions shall have been made to the family trust, except a cotrustee of a trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo, shall [move from the state of Missouri or otherwise] cease to be eligible for services provided by the department of mental health and neither the donor nor the then acting cotrustee shall revoke or withdraw [all] **the applicable portion as set forth in subdivision (7) of this subsection**, of the principal balance, then the board of trustees may, by written notice to such donor or acting cotrustee, terminate the trust as to such beneficiary and thereupon shall distribute the applicable portion, as set forth [herein] **in subdivision (7) of this subsection**, of the principal balance, to the trustee of the successor trust to be held, administered and distributed by such trustee in accordance with the provisions of the successor trust described in subdivision [(10)] **(12)** of this subsection.

(7) If at the time of withdrawal or termination as provided in subdivision (6) of this subsection of a life beneficiary's account from the trust either the life beneficiary shall not have received any benefits provided by the use of the trust income or principal or the life beneficiary shall have received benefits provided by the use of trust income or principal for a period of not more than five years from the date a contribution shall have first been made to the trust for such life beneficiary, then an amount equal to ninety percent of the principal balance shall be distributed to the successor trust, and the balance of the principal balance together with all undistributed net income, shall be distributed to the charitable trust; provided, however, if the life beneficiary at the time of such withdrawal by the cotrustee or termination as provided above shall have received any benefits provided by the use of trust income or principal for a period of more than five years from the date a contribution shall have first been made to the trust for such life beneficiary, then an amount equal to seventy-five percent of the principal balance shall be distributed to the successor trust, and the balance of the principal balance together with all undistributed net income, shall be distributed to the charitable trust.

(8) Subject to the provisions of subdivision (9) of this subsection, if the life beneficiary

dies before receiving any benefits provided by the use of trust income or principal, then an amount equal to one hundred percent of the principal balance shall be distributed to such person or persons as the donor shall have designated. Any undistributed net income shall be distributed to the charitable trust. If at the time of death of the life beneficiary, the life beneficiary shall have been receiving benefits provided by the use of trust income or principal or income and principal, then, in such event, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons as the donor designated, and the balance of the principal balance, together with all undistributed net income, shall be distributed to the charitable trust.

(9) In the event the trust is created as a result of a distribution from a personal representative of an estate of which the life beneficiary is a distributee, then if the life beneficiary dies before receiving any benefits provided by the use of trust income or principal, an amount equal to one hundred percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. [The balance, if any, of the principal balance, together with all] **Any** undistributed income shall be distributed to the charitable trust. If at the time of death of the life beneficiary the life beneficiary shall have been receiving benefits provided by the use of trust income or principal or income and principal, then, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. The balance of the principal balance, together with all undistributed income shall be distributed to the charitable trust.

(10) In the event the trust is created as a result of the recovery of damages by reason of a personal injury to the life beneficiary, then if the life beneficiary dies before receiving any benefits provided by the use of trust income or principal, the state of Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the life beneficiary's account, an amount equal to one hundred percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. **If there are no heirs**, the balance, if any, of the principal balance, together with all undistributed income shall be distributed to the charitable trust. If at the time of death of the life beneficiary the life beneficiary should have been receiving benefits provided by the use of trust income or principal or income and principal then the state of Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the life beneficiary's account, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. **If there are no heirs**, the balance of the principal

balance, together with all undistributed income, shall be distributed to the charitable trust.

**(11) In the event an account is established with the assets of the beneficiary, by the beneficiary, by a family member, by the beneficiary's guardian or pursuant to a court order, all in accordance with Title 42 of the United States Code Section 1396p(D)(4)(C), then upon the death of the life beneficiary, the state of Missouri shall receive all amounts remaining in the life beneficiary's account up to an amount equal to the total medical assistance paid on behalf of such life beneficiary under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the life beneficiary's account, an amount equal to seventy-five percent of the principal balance shall be distributed to such person or persons who are the life beneficiary's heirs at law. If there are no heirs, the balance of the principal balance, together with all undistributed income, shall be distributed to the charitable trust.**

**(12)** Upon receipt of a notice of withdrawal from a designated cotrustee, other than the original donor, and a determination by the board of trustees that the reason for such withdrawal is good and sufficient, or upon the issuance of notice of termination by the board of trustees, the board of trustees shall distribute and pay over to the designated trustee of the successor trust the applicable portion of the principal balance **as set forth in subdivision (7) of this subsection**; provided, however, that court approval of distribution to a successor trustee shall be required in connection with any trust created pursuant to section 473.657, RSMo, or section 475.093, RSMo. The designated trustee of the successor trust shall hold, administer and distribute the principal and income of the successor trust, in the discretion of such trustee, for the maintenance, support, health, education and general well-being of the beneficiary, recognizing that it is the purpose of the successor trust to supplement, not replace, any government benefits for the beneficiary's basic support to which such beneficiary may be entitled and to increase the quality of such beneficiary's life by providing the beneficiary with those amenities which cannot otherwise be provided by public assistance or entitlements or other available sources. Permissible expenditures include, but are not limited to, more sophisticated dental, medical and diagnostic work or treatment than is otherwise available from public assistance, private rehabilitative training, supplementary education aid, entertainment, periodic vacations and outings, expenditures to foster the interests, talents and hobbies of the beneficiary, and expenditures to purchase personal property and services which will make life more comfortable and enjoyable for the beneficiary but which will not defeat his or her eligibility for public assistance. Expenditures may include payment of the funeral and burial costs of the beneficiary. The designated trustee, in his or her discretion, may make payments from time to time for a person to accompany the beneficiary on vacations and outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to visit the beneficiary. Any undistributed income shall be added

to the principal from time to time. Expenditures shall not be made for the primary support or maintenance of the beneficiary, including basic food, shelter and clothing, if, as a result, the beneficiary would no longer be eligible to receive public benefits or assistance to which the beneficiary is then entitled. After the death and burial of the beneficiary, the remaining balance of the successor trust shall be distributed to such person or persons as the donor shall have designated.

[(12)] (13) The charitable trust shall be administered as part of the family trust, but as a separate account. The income attributable to the charitable trust shall be used to provide benefits for individuals who have a disability or who are eligible for services provided by or through the department and who either have no immediate family or whose immediate family, in the reasonable opinion of the trustees, is financially unable to make a contribution to the trust sufficient to provide benefits for such individuals, while maintaining such individuals' eligibility for government entitlement funding. As used in this section, the term "immediate family" includes parents, children and siblings. The individuals to be beneficiaries of the charitable trust shall be recommended to the trustees by the department and others from time to time. The trustees shall annually [agree on] **determine** the amount of charitable trust income to be used to provide benefits and the nature and type of benefits to be provided for each identified beneficiary of the charitable trust. Any income not used shall be added to principal annually.

402.217. 1. No beneficiary shall have any vested or property rights or interests in the family trust, nor shall any beneficiary have the power to anticipate, assign, convey, alienate, or otherwise encumber any interest in the income or principal of the family trust, nor shall such income or the principal or any interest of any beneficiary thereunder be liable for any debt incurred by such beneficiary, nor shall the principal or income of the family trust be subject to seizure by any creditor or any beneficiary under any writ or proceeding in law or in equity.

2. Except for the right of a donor to revoke any gift made to the trust, pursuant to subdivision (4) of subsection 2 of section 402.215, and the right of any acting cotrustee, other than the original donor, to withdraw all or a portion of the [original contribution] **principal balance**, pursuant to subdivision (5) of subsection 2 of section 402.215, neither the donor nor any acting cotrustee shall have the right to sell, assign, convey, alienate or otherwise encumber, for consideration or otherwise, any interest in the income or principal of the family trust, nor shall such income or the principal or any interest of any beneficiary thereunder be liable for any debt incurred by the donor or any acting cotrustee, nor shall the principal or income of the family trust be subject to seizure by any creditor of any donor or any acting cotrustee under any writ or proceeding in law or in equity.